

Amendments to the Drawings:

Please substitute the replacement drawing sheets attached as Exhibit A and containing Figures 1-11 for the original drawing sheets containing Figures 1-11.

Attachment: Replacement Sheets (Appendix A)

REMARKS

I. INTRODUCTION

Claims 11-12 have been withdrawn from further consideration as drawn to a non-elected invention. Claims 1, 4-5, 7-8 and 10 have been amended. Accordingly, claims 1-12 are presently pending in this application. Applicants respectfully request reconsideration of the application in view of the foregoing amendments and the following arguments.

II. OBJECTIONS TO THE DRAWINGS

The drawings stand objected to because Figures 2, 5-and 8 lack reference numbers. Applicants have submitted three sheets of replacement drawings. In addition to adding reference numbers to Figures 2, 5 and 8, these sheets of drawings replace the informal drawings originally filed with the application with formal drawings conforming to the requirements of 37 C.F.R. § 1.84. Applicants respectfully submit that the amended drawings overcome the objections to the drawings. Accordingly, Applicants request that the objections to the drawings be withdrawn.

III. OBJECTIONS TO THE SPECIFICATION

The text of the Abstract stands objected to. Applicants have amended the Abstract and submit that the objections have been overcome. Applicants therefore request that the objections be withdrawn.

IV. REJECTION OF CLAIMS 4-5 AND 7-8 UNDER 35 U.S.C. § 112

Claims 4-5 and 7-8 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regarding as their invention. In particular, the Examiner has objected

to the recitation of “a wall thickness” in claims 4-5 and 7-8 and to the recitation of “center point” in claim 5. Applicants have amended claims 4-5 and 7-8 to recite “said wall thickness” and “center portion” in accordance with the Examiner’s suggestion.

Applicants submit that the rejection has been overcome and request that the rejection be withdrawn.

V. REJECTION OF CLAIMS 1-10 UNDER 35 U.S.C. § 103(A)

Claims 1-10 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over Simon (U.S. Patent No. 6,439,672) in view of Alexoff (U.S. Patent No. 6,779,375).

Applicants have amended claims 1, 4-5, 7-8 and 10. Applicants respectfully submit that the rejection of claims 1-10 under 35 U.S.C. § 103(a) is improper and/or has been overcome because the combination of references cited by the Examiner fail to disclose or suggest all of the limitations in the claims and because there is no suggestion or motivation to combine the teachings of the cited references.

“Patent examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case.” MPEP § 2141 (emphasis in original).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

MPEP § 2143. Applicants submit that the combination of Simon and Alexoff fails to teach or suggest all of the limitations set forth in the claims and that there is no suggestion or motivation to combine the teachings of Simon and Alexoff.

Independent claim 1 recites “an axle assembly” having a tube with “first and second end portions and a center portion.” The “center portion has a cross-sectional wall thickness that is uniform at first and second axially spaced segments and a non-uniform cross-sectional wall thickness both between the axially spaced segments and between each of the axially spaced segments and said tube end portions.” Independent claim 10 recites substantially similar limitations. Applicants submit that the combination of Simon and Alexoff does not disclose or suggest an axle assembly meeting the above-recited limitations.

Simon discloses an axle tube having a non-uniform wall thickness. With reference to the terms used in claims 1 and 10, the Examiner identifies a portion of the axle tube designated as 22 as corresponding to a portion of the “center portion” disposed between the “axially spaced segments” designated as 18 and the “end portions” designated as 20. The Examiner acknowledges that Simon does not disclose that this portion 22 is “non-uniform” as recited in claims 1 and 10, but argues that Alexoff discloses a tube meeting this limitation, referring to the portion identified by number 84 in Figure 3D of Alexoff. Applicants respectfully disagree. Alexoff does not teach a wall thickness that is non-uniform at the portion designated at 84. Although the wall thickness of Alexoff varies moving longitudinally along the tube, the wall thickness is uniform at any point along the longitudinal extent. Applicants have amended claims 1 and 10 to clarify that the non-uniform wall thickness recited in claims 1 and 10 refers to a non-uniform cross-sectional wall thickness to further clarify this distinction.¹

¹ Applicants acknowledge that Alexoff discloses a non-uniform cross-sectional wall thickness in Figure 4. The method employed in Alexoff to create this non-uniform cross-sectional wall thickness, however, would require the entire longitudinal extent of the axle tube to be of non-uniform wall thickness.

Applicants further submit that there is no suggestion or motivation to combine the teachings of Simon and Alexoff. As stated above, the Examiner proposes modifying portion 22 of the Simon axle to have a non-uniform wall thickness as allegedly taught by Alexoff. Portion 22, however, is “sized to abut, in face-to-face contact, the annular end face 19 formed on the adjacent end of the tube 11.” Simon, Col. 4, lines 10-13. If portion 22 were made of non-uniform thickness, the surface contact between portions 18 and 22 would be reduced thereby weakening the joint.

Because the combination of references cited by the Examiner does not disclose or suggest an axle assembly meeting all of the limitations recited in independent claims 1 and 10 and because there is no suggestion or motivation to combine the teachings of Simon and Alexoff, Applicants submit that the rejection of claims 1 and 10 under 35 U.S.C. § 103(a) is improper. Accordingly, Applicants request that the rejection of claims 1 and 10 under 35 U.S.C. § 103(a) be withdrawn. Further, at least because each of claims 2-9 depend from independent claim 1, Applicants submit that the rejection of claims 2-9 under 35 U.S.C. § 103(a) is improper and request that the rejection be withdrawn.

VI. CONCLUSION

For the above cited reasons, all of the claims presently pending in this application are believed to be allowable. If the Examiner has any further questions or concerns, the Examiner is invited to contact the Applicant's undersigned attorney.

Respectfully submitted,



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